

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Monique West	Team: Squad #2	CCRB Case #: 201403977	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Thursday, 04/17/2014 2:00 PM	Location of Incident: Intervale Avenue train station (2 and 5 line); TB DT12 stationhouse	Precinct: 41	18 Mo. SOL 10/17/2015	EO SOL 10/17/2015	
Date/Time CV Reported Fri, 04/18/2014 1:25 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Thu, 04/24/2014 6:12 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Andres Gomera	8356	954873	TB
2. POM Michael Daly	14117	952635	TB DT12
3. An officer			
4. Officers			

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POF Eleni Donaldson	10308	954748	TB
2. SGT Esperanza Barry	00133	918668	TB
3. POF Iris Uceta	24539	953505	TB DT12

Officer(s)	Allegation	Investigator Recommendation
A. An officer	Force: An officer struck § 87(2)(b) with a blunt instrument.	
B. An officer	Force: An officer used physical force against § 87(2)(b)	
C. POM Michael Daly	Force: PO Michael Daly used physical force against § 87(2)(b)	
D. POM Andres Gomera	Abuse: PO Andres Gomera did not process § 87(2)(b)'s complaint regarding officers.	
E. Officers	Abuse: Officers did not process § 87(2)(b) complaint regarding officers.	
F. POM Michael Daly	Force: PO Michael Daly tightly handcuffed § 87(2)(b)	
G. An officer	Force: An officer tightened § 87(2)(b) leg restraints.	
H. An officer	Abuse: An officer threatened § 87(2)(b) with the use of force.	
I. An officer	Force: An officer used physical force against § 87(2)(b)	

Case Summary

On April 17, 2014, at approximately 1:55 a.m., PO Eleni Donaldson and PO Andres Gomera of Transit Bureau District 12 stopped § 87(2)(b) for trespassing into the MTA system after he had been ejected for panhandling. During his interaction with the officers, an unidentified officer allegedly attempted to strike his leg with a baton but missed (**allegation A**) and another unidentified officer punched him in his face (**allegation B**). After he was placed in handcuffs, PO Michael Daly of TB DT12 kicked his feet into the patrol car (**allegation C**). When they arrived at the TB DT12 stationhouse, § 87(2)(b) told PO Gomera and an unidentified officer that he wanted to file a complaint. The unidentified officer allegedly responded, “You were out fighting with the cops. You don’t get to file a complaint.” When he asked another unidentified officer to file a complaint, the officer waved him off as if to dismiss him. None of the officers processed his complaint (**allegations D and E**). § 87(2)(b) alleged that as he was being escorted out of the precinct later that day to go to central booking, PO Daly squeezed the handcuffs onto his wrists and twisted them (**allegation F**). An unidentified officer took an asp, put it between the chains on § 87(2)(b) leg restraints and twisted it, causing his restraints to tighten (**allegation G**). Another unidentified officer came out of the precinct with a can of pepper spray in his hand and told § 87(2)(b) to get into the van. When § 87(2)(b) insisted on filing a complaint first, the officer began to shake the pepper spray (**allegation H**). The same unidentified officer grabbed § 87(2)(b) by his legs and pulled him off of the van, causing him to fall on his buttocks (**allegation I**). § 87(2)(b) allegedly sustained a bloody nose, cuts bruises and a backache. He stated that he did not complain of the cuts, bruises and backache while at the stationhouse. § 87(2)(b) was treated at § 87(2)(b) on § 87(2)(b). § 87(2)(b) was arrested for § 87(2)(b).

§ 87(2)(b)

Mediation, Civil and Criminal Histories

Due to § 87(2)(b) arrest, this case was not eligible for mediation. The notice of claim has been requested and will be added to the case file upon receipt. § 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

§ 87(2)(b)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint filed by § 87(2)(b) (encl. B3).
- PO Daly has been a member of the NYPD for two years, has had two previous CCRB allegations involving one case with no substantiated allegations. § 87(2)(g)
- This is the first CCRB complaint against PO Gomera during his 1 year tenure (encl. B1).

Finding and Recommendations

Allegations Not Pleaded

- **Stop:** § 87(2)(b) admitted that he had been asking people to swipe him into the transit system. He also admitted that PO Gomera asked him to leave and that he later returned. § 87(2)(g)
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- **Offensive Language:** § 87(2)(b) alleged that two inmates at the precinct told him that while they were in a patrol car, an officer said, “I just punched this nigga in the face.” § 87(2)(b) could not identify these inmates and there is no way to determine that § 87(2)(b) was the individual the officer spoke of.

Explanation of Subject Officer Identification

- § 87(2)(g)
- Although PO Gomera stated that he placed § 87(2)(b) in the patrol car on his own. § 87(2)(b) identified PO Daly by name as the officer who placed him in the vehicle and kicked him and PO Daly admitted to placing him in the patrol car on his own. § 87(2)(g)
- § 87(2)(b) identified PO Gomera by name as the officer who he asked to file a complaint and PO Gomera admitted that § 87(2)(b) informed him that he wanted to file a complaint. § 87(2)(g)
- § 87(2)(b) alleged that he informed a 5’4” tall Hispanic female officer in her 30s with a light skin complexion and a curvy build while he was in the holding cells that he wanted to file a complaint. There were officers at the stationhouse who are assigned to Transit District 12 and the Transit Bureau. The description was too general and there were multiple officers working during this time that fit the description. None of the officers interviewed heard any officer make the statement alleged. § 87(2)(g)
- § 87(2)(b) alleged that he also informed the desk sergeant who he described as a 5’7”-5’9” tall white male with a tan complexion in his 40s with black hair and a slim build that he wanted to file a complaint and the sergeant waved his hand as if to dismiss him. The sergeant never took his complaint. § 87(2)(b) stated that he could not recall the desk sergeant’s name but could recognize him from a photograph. The desk sergeant working at the time was Sgt. Anthony Burzotta (see roll call, encl. E33). He is a white male with a pale complexion and brown hair who stands 5’10” tall and weighs 185 pounds (see MOS photo, encl. E50). At the time of the incident he was § 87(2)(b) old. The photographs of Sgt. Burzotta as well as the other sergeants assigned to the command and working the same tour were shown to § 87(2)(b) however, he did not recognize any of them (see photo arrays and summary encl. C13-17). § 87(2)(b) also alleged that the same officer threatened to use pepper spray against him and grabbed him by his legs and pulled him off the van, causing him to land on his buttocks. § 87(2)(g)
- § 87(2)(b) alleged that an officer took an asp and put it between the chains on his leg restraints and twisted it, causing them to tighten. § 87(2)(b) could not identify or describe the officer that did this. § 87(2)(g)

Recommendations

Allegation A- Force: An officer struck § 87(2)(b) with a blunt instrument.

Allegation B-Force: An officer used physical force against § 87(2)(b)

§ 87(2)(b) alleged that an officer attempted to strike his leg with a baton but missed. He also alleged that as his arms were being held by two officers, another officer punched him in the face. § 87(2)(b) alleged that he sustained a bloody nose from the punch and was later treated at a hospital; however, he refused to sign a medical release (encl. C9-11). In § 87(2)(b) statement to IAB, he alleged that he was punched after he was in handcuffs and he did not allege that an officer attempted to strike him with a baton (encl. C4).

§ 87(2)(b) did not have any visible injuries in his arrest photo (encl. E54). According to the command log (encl. E47) and the prisoner pedigree card (encl. E16), his appearance was normal and he did not request medical attention.

§ 87(2)(b) the MTA station agent on duty at the time, stated that no officer removed their asp or used any additional force against § 87(2)(b) besides grabbing his arms which is why it took them so long to subdue him. She stated that no one punched § 87(2)(b) (encl. C21).

PO Donaldson stated that she did not attempt to strike § 87(2)(b) in the leg with a baton and did not see another officer do so. No officer punched § 87(2)(b) (encl. D14-15). PO Gomera stated that other than grabbing his arms, he did not use any additional force against § 87(2)(b) and did not see PO Donaldson use any additional force against him. He could not recall where the additional officers touched § 87(2)(b) to place him in handcuffs. § 87(2)(b) did not complain of any injuries or pain (encl. D7-9).

§ 87(2)(g)

Allegation C- Force: PO Michael Daly used physical force against § 87(2)(b)

§ 87(2)(b) alleged that he was placed head first into the patrol car at an awkward angle making it hard for him to place his feet into the car. PO Daly then allegedly kicked his feet into the patrol car (encl. C9-11).

PO Daly stated that § 87(2)(b) stiffened his body preventing the officers from placing him in the car. PO Daly placed gentle pressure on his back and the back of his knee to place him in a seated position. He did not kick § 87(2)(b) or use any additional force to place him in the car. No other officer assisted him in placing § 87(2)(b) in the car (encl. D22-23). PO Gomera stated that he placed § 87(2)(b) in the patrol car without the assistance of any other officer by pushing him into the vehicle on one side and pulling him in from the opposite side (encl. D7-9). PO Uceta stated that PO Daly placed § 87(2)(b) into the car but her back was to them and she did not see how he got him into the car (encl. D30). PO Donaldson and Sgt. Barry did not see § 87(2)(b) get placed in the patrol car (encl. D14-15, D35-36).

§ 87(2)(g)

Allegation D- Abuse of Authority: PO Andres Gomera refused to process § 87(2)(b) complaint regarding an officer.

§ 87(2)(b) alleged that he told PO Gomera that he would like to speak to someone regarding filing a complaint against officers. § 87(2)(b) complaint was never filed at the stationhouse (encl. C9-11).

PO Gomera admitted that § 87(2)(b) informed him while he was in the cell area that he wanted to file a complaint and he immediately informed Sgt. Barry of § 87(2)(b) request. PO Gomera claimed that Sgt. Barry later spoke to § 87(2)(b) about his request. PO Gomera did not know whether § 87(2)(b) was ever allowed to file his complaint at the stationhouse (encl. D7-9). Sgt. Barry stated that she did not hear § 87(2)(b) request to file a complaint and did not testify that she was informed by another officer of his desire to file a complaint (encl. D35-36).

According to Patrol Guide Procedure 207 -31 (encl. A1-7), officers receiving civilian complaints of officer misconduct must give the complainant a copy of the civilian complaint report and report the complaint to either the CCRB or IAB, depending on the allegations.

§ 87(2)(g)

Allegation E- Abuse of Authority: Officers refused to process § 87(2)(b) complaint regarding officers.

Allegation G- Force: An officer tightened § 87(2)(b) leg restraints.

Allegation H- Abuse of Authority: An officer threatened § 87(2)(b) with the use of force.

Allegation I- Force: An officer used physical force against § 87(2)(b)

§ 87(2)(g)

Allegation F- Force: PO Michael Daly tightly handcuffed § 87(2)(b)

§ 87(2)(b) alleged that as he was being escorted out of the stationhouse to be escorted to central booking, PO Daly squeezed the handcuffs, which were already on his wrists, and twisted them (encl. C9-11).

According to the command log (encl. E47) and the prisoner holding pen roster (encl. E43), § 87(2)(b) was left the stationhouse to be transported to central booking at 5:15 p.m.

According to PO Daly and his memo book (encl. D19, D23), he arrived at East 180th Street at 5 p.m. At 5:10 p.m., he boarded a northbound 2 train and at 5:22 p.m. he arrived at the 225th Street station.

§ 87(2)(g)

Team: _____

Investigator:	_____	_____	_____
	Signature	Print	Date

Supervisor:	_____	_____	_____
	Title/Signature	Print	Date

Reviewer:	_____	_____	_____
	Title/Signature	Print	Date

Reviewer:	_____	_____	_____
	Title/Signature	Print	Date